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Opinions under the Bombay Shops and Establishments Act 1939

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RP. 16/4/56

Office of the R.L.A.

In the absence of any definition of the expression 'year' either in the Bombay Shops and Establishments Act, 1939, or in the rules made thereunder, it would have the same meaning as has been assigned to it in section 3(51) of the Bombay General Clauses Act, 1904. 'Year' as defined by the latter Act means a year reckoned according to the British calendar. The view expressed by the Municipal Commissioner in this respect is therefore correct.

Sd. P.N.Moos.

Remembrancer of Legal Affairs.

U.R.to P.& S.D.,No.1025, dated the 3rd February 1941.

MRP.
26/4/56.

Office of the R.L.A.

It is not known whether, as a matter of fact, the Chambers of Commerce and other bodies in question do or do not do the business of advertising, commission, forwarding or commercial agency or whether any of them are or are not joint stock companies. If they are not doing any such business and are also not joint stock companies they will not fall under section 2(3) of the Bombay Shops and Establishments Act, 1939. The Political and Services Department is therefore requested to verify the facts and thereafter, if necessary, again consult the Remembrancer of Legal Affairs.

Sd. P.N.Moos,
Remembrancer of Legal Affairs.

U.R.to P.& S.D.,No. 1118, dated the 5th February 1941.

MRP.
26/4/56.

ffice of the R.L.A.

Section 31 of the Bombay Shops and Establishments Act, 1939, does not require that the suspension notified thereunder must be "of a general character for an area to which the Act applies" and consequently there does not appear to be any legal objection if such suspension is limited to only certain establishments or classes of establishments to which the Act applies such as the Imperial Bank branches etc.

Sd. P.N.Moos,
10/3.
Remembrancer of Legal Affairs.

U.R.to the P.& S.D.,No.,No.2171 dated the 11th March 1941.

MRP.
26/4/56.

Office of the R.L.A.

We should most certainly appeal against the judgment of Mr. Coelho which, in my opinion is wrong. The arguments on which he has based his findings are fallacious and misconceived. The whole case hinges on the interpretation of the term "employer" as used in section 2(5) of the Bombay Shops and Establishments Act, 1939, Mr. Coelho has interpreted it to mean a person who employs another. To my mind, there is no justification for such an interpretation. Section 2(5) defines "employer" as a person having charge of or owning the business of an establishment to which this Act applies and includes the manager, agent or any other person acting in the general management or control of such shop, restaurant, theatre or establishment. "Establishment to which this Act applies" has been defined in section 2(6) as a shop, commercial establishment, restaurant, eating house, theatre or any other place of public amusement or entertainment or any other establishment in respect of which a declaration is made under section 18. The definition of the term "employer" is no doubt an artificial one but nevertheless it is specific in its terms and is wide

enough to include the owner of what is known as a one-man shop. There is no warrant for Mr. Coelho's contention that the Act has no application to one-man shops. The cardinal rule for the construction of an Act is that it should be construed according to the intention of the Legislature which passed it. When the language of an Act is clear and explicit we must give full effect to it, whatever may be the consequences. In a court of law what the Legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact either in express words or by reasonable and necessary implimation. The language of an Act can neither be extended beyond its natural and proper limits in order to supply omissions and defects, nor strained to suit an individual case. The argument ab inconvenienti is only admissible in construction where the meaning of the Statute is obscure, but where the language is explicit its consequences are for the Legislature and not for the courts to consider. Modern Acts generally contain an interpretation clause in which they endeavour to define often arbitrarily and articicially the chief terms used. It is true that every word in a Statute ought, prima facie, to be construed in its primary and natural sense, unless a secondary or more limited sense is required

by the subject or contex. But where, as in the present case, a word has been expressly given a wider meaning than its natural sense, it ought not to be qualified on the ground that it is a complete negation of its ordinary dictionary meaning or on the ground of its association with other words. Mr.Coelho's views regarding the non-application of the Act to a one-man shop have not been shared by Mr. Khambata who, in a parallel case, held that the term "employer" was wide enough to include the owner of a one-man shop.

2. Now coming to the interpretation of the word "employer" as used in rule 12 of the Rules framed under the Act, the question is not entirely free from doubt. But I am inclined to hold that both Messrs. Coelho and Khambata are wrong in interpreting the word in a restricted sense so as to exempt the owner of a one-man establishment from the provisions of the rule. Section 33(3) of the Act expressly enacts that the rules shall be deemed to be part of the Act. Now the rules that have been framed do not include the definition of the term "employer". It is a well established principle that terms used in Statutory Rules must be construed in the same manner as terms used in the Statute authorixing the making of the Rules, unless a contrary intention appears. In the present case,

rule 2 of the Rules expressly lays down that unless there is anything repugnant in the subject or context, words and expressions used in the Act and not defined in the Rules shall have the meanings assigned to them in the Act. It follows, therefore, that the term "employer" must bear the same meaning in the Rules as in the Act itself, unless there is anything repugnat in the context. It is contend ed that the whole of rule 12 is so framed that in its context the term "employer" cannot be given its full meaning as in the Act, but only a restricted meaning i.e. as one who employs another, because rule 12 deals with employers in their relation with employees. Although I am not disposed to accept that contention as particularly sound, it is nevertheless one which is not free from doubt. It is true that nine out of the ten sub-rules of rule 12 deal with matters concerning the employer in his relations with the employee. But sub-rule (10) is an exception and relates only to the duty of an employer to maintain a visit book for the remarks of the visiting Inspector. It would be rather stretching the point to argue that the word "employer" in sub-rule (10) must also be used in its restricted sense, when, as a matter of fact, that sub-rule in its context makes no reference to an employer in his relation with an employee. The point, however, is, as I have already observed, not free

from doubt. If we appeal against the judgment of Mr.Coelho it would be open to Government to contest all the points at issue and it will not be necessary to file another appeal against the judgmentx of Mr. Khambata regarding the interpretation of the term "employer" in rule 12 of the Rules.

Sd. P.N.Moos,
14/5
Remembrancer of Legal Affairs.

U.R.to P.& S.D.,No.4441, dated 15th May 1941.

MRP.
26/4/56.

Office of the R.L.A.

The question raised for consideration in this case is whether the Bombay Shops and Establishments Act, 1939, applies to persons employed in the Car-Sheds of the B.E.S.T. Co.,Ltd., at Colaba, Dadar and Tardeo.

2. Section 2(3) of the Act defines the term "Commercial Establishment" to mean, inter alia, an establishment which is an Insurance Company, Joint Stock Company, bank, brokers' office, exchange or such other class of establishments as the Provincial Government may by notification in the Official Gazette declare to be a commercial establishment for the purposes of the Act. A joint stock company is not defined in the Act but is defined in section 254 of the Indian Companies Act, 1913, to mean " a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of these shares or that stock, and no other persons." Presumably the B.E.S.T.Company is such a joint stock company. If so, it is a commercial establishment within the meaning of the Bombay Shops and Establishments Act 1939. "Person employed" has been defined to mean, in the case of a factory, a member of the clerical establishment; and in the case of a commercial establishment other than a factory, a person wholly or principally employed in connection with the business of the establishment, including a peon. The Act would therefore apply to all persons employed by the B.E.S.T.Co.,Ltd., except such persons as are employed, otherwise in a clerical capacity, in any premises which is a factory within the meaning of the Act.

3. The General Manager of the B.E.S.T.Company contends that a joint stock company would not be a "Commercial establishment" under the Act unless such company has been

expressly declared to be a commercial establishment by Government by a notification in the Official Gazette. The contention is based upon the concluding part of section 2(3); and the argument is that the words "as the Provincial Government by notification in the Official Gazette declare to be a commercial establishment for the purposes of the Act" govern all the classes of establishments enumerated before, commencing with "an insurance company". This construction, however, is contrary to the plain meaning of the words used in section 2(3); it first enumerates the several classes of establishments which are commercial establishments for the purposes of the Act, and then proceeds to empower Government to make such declaration in regard to other classes of establishments no mentioned. The word "such" in the expression "such other establishments" is significant and clearly goes to show that the subsequent words "as the Provincial Government by notification in the Official Gazette declare to be a commercial establishment for the purposes of the Act" were meant to qualify only these establishments and not the ones enumerated before, Had the intention been otherwise, the word "such" would have been used before the words "insurance company, joint stock company .....". Further if the above construction were not correct, the enumeration of the various classes of establishments, insurance company, joint stock company, bank, etc., would be redundant and purposeless And it is an accepted canon of construction that a statute ought to be construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant (The Queen vs. The Bishop of Oxford, 1879, 4 Q.B.D.245, at page 261). The view taken by the General Manager of B.E.S.T. Co. is therefore not correct.

4. The General Manager suggests that the Shops and Commercial Establishments Act has the effect of modifying the provisions of the Indian Factories Act, 1934 and the Bombay Motor Vehicles Act and Rules. It may however be

pointed out that the provisions in the Factories Act about hours of work etc. apply to persons who are employed otherwise than in a clerical capacity, see the definition of "worker" in section 2(h) and sections 34 to 38 of the Factories Act. It is clear from clauses (ii) and (iii) of section 2(13) of the Shops and Establishments Act, 1939, that persons working in a factory (otherwise than in a clerical capacity) are excluded from the definition of "person employed", and consequently the Shops and Establishmmants Act will not apply to them. There does not therefore appear to be any conflict between the provisions of the Factories Act and the Bombay Shops and Commercial Establishments Act. There is however some conflict between the provisions of section 65 of the Motor Vehicles Act, 1939, which apply to drivers of transport vehicles, and sections 11 and 12 of the Bombay Shops and Establishments Act. In view of section 107 of the Government of India Act, 1935, the provisions of the Motor Vehicles Act will prevail over the provisions of the Bombay Shops and Establishments Act.

5. The definition of the term "commercial establishment" given in the Act is on the lines of the definition supplied by the Commissioner of Labour at the time of drafting the Bill. The Commissioner of Labour may therefore be consulted whether the words "Joint Stock Company" should be omitted from the definition by amending the Act.

Sd. P.N.Moos,
20/6
Remembrancer of Legal Affairs.

U.R.to P.& S.D.,No.5534, dated the 23rd June 1941.

MRP.
26/4/56.

R.I.No.5459/19-6-1941.

Submitted.

Section 14 of the Bombay Shops and Establishments Act, 1939, provides that after the hour fixed for closing of shops under section 5, no goods of the kind sold in such shops shall be sold in any restaurantx, eating house, theatre or any other place of public amusement or entertainment except for consumption on the premises. The Municipal Commissioner states that great inconvenience is caused to the public in obtaining ice, milk and aerated waters after 9 p.m. which is the closing hour of shops as these articles are often required in cases of sudden illness and other unforeseen circumstances He, therefore, requests that Government might issue a Notification allowing the sale of ice, milk upto one seer and aerated waters in restaurants and eating houses after the closing hour. The P.& S.D. has expressed a view in paragraph 3 of its office note that in order to achieve the object sec.14 of the Act will have to be amended; and presumes that it cannot be achieved by granting exemption under section 4(1)(k) or sec.2 31 of the Act. The question for the consideration of the R.L.A. whether the view expressed by P.& S.D. is correct.

2. Under clause (k) of sub-section (1) of sec.4 of the Bom. Shops and Establishments Act, 1939, the provisions of the Act are not applicable to establishments or

classes of establishments which the Provincial Govt. by Notification in the Official Gazette, exempt from the operation of the Act. It is true that the restaurants and eating houses are 'establishments to which the Act applies' within the meaning of sec.2(6) of the Act. But this provision appears to contemplate the exemption of wholse classes of establishments and it does not appear feasible that the Municipal Commissioner's proposal to permit the sale of ice, milk and aerated waters in restaurants and eating houses after the closing hour of shops can be given effect to by a Notification under this section.

3. Section 31 of the Act empowers the Provincial Govt., by Notification in the Official Gazette, to suspend the operation of all or any of the provisions of the Act for such period and subject to such conditions as it deems fit on account of any prescribed holidays or occasion. Under this section the exemption must be periodic and will only be granted on account of holidays or other occasions. It does not also appear that the object in question can be achieved by a Notification under this section.

4. The only remedy to give effect to the Commr.'s proposal appears, therefore, to amend sec.14 of the Act by adding a proviso thereto. The presumption made in para.3 of the P.& S.D. office note is correct. The proposal made by the Commr. can only be given effect to by amending the Act.

Sd.D.W.Deshmukh
25/6/41

A.S. Reply may be as at A
Id.R.T.K. 26/6.

A.L.R. This seems for B Branch.
Id. N.K.D. 26/6.

U.R. P&S.D. No. 6003 dt 11-7-41

Office of the R.L.A.

The question raised for consideration of the R.L.A. is whether a keeper of a restaurant or eating house who holds a licence for sale of tobacco under section 11 of the Tobacco Duty (Town of Bombay) Act, 1857, can sell tobacco for consumption on such premises under section 14 of the Bombay Shops and Establishments Act, 1939, after the hours of closing fixed for shops under section 5(1)(b) of the Act.

2. Condition 14 of the licenses issued in forms A and B appended to the Tobacco Duty (Town of Bombay) Rules, 1938, as amended by Government Notification, Revenue Department No.5240/39 dated 13th May 1941 provides that the licensee shall not, except with the permission of the Collector, open the said premises (i.e. the premises in respect of which the license for sale of tobacco is granted or sell tobacco therein before 5-30 A.M. or keep the premises open or sell tobacco therein after 12 midnight or such hour as may be fixed by or under the provisions of the Bombay Shops and Establishments Act, 1939, or any other law for the time being in force whichever is earlier. Section 5(1)(b) of the Bombay Shops and Establishments Act provides that save as provided by or under any enactment for the time being in force no shop shall on any day be closed later than 9 P.M. or such hour as may be fixed by the Provincial Government by general or special order in this behalf. It appears that no earlier hour than 9 P.M. is fixed under section 5(1)(b) of the Act for the closing of shops in respect of which licenses for sale of tobacco are granted. The closing hour fixed for these shops, therefore, under this section is 9 P.M. Under section 2(17), "shop" means any premises where goods are sold either by retail or wholesale or both or where services are rendered to customers but not include a restaurant, eating house or commercial establishment. The closing hour of 9 P.M., therefore, does not apply in case of restaurants and eating houses. Consequently under condition 14 of the conditions of the license form referred to above there is no bar against the

sale of tobacco in any restaurant or eating house after the hour of 9 P.M. There is no bar under the Bombay Shops and Establishments Act also against the sale of the tobacco in any restaurant or eating house after the hour of 9 P.M. if such tobacco is sold for consumption on the premises. Section 14 of the Act provides that after the hour fixed for closing of shops under section 5, no goods of the kind sold in such shops shall be sold in any restaurant or eating house except for consumption on the premises. Under this section the keepers of restaurants and eating houses are entitled to sell tobacco such as cigars and cigarettes etc. for consumption on the premises after the hour of 9 p.m. fixed for closing of shops under section 5. The answer to the question raised is therefore in the affirmative. The view taken by the Commissioner in his letter at pages 1-2 ante is correct.

Sd. P.H.Moos,
15/10
Remembrancer of Legal Affairs.

U.R.to R.D.,No.9056 dated the 17th October 1941.

MRP.
26/4/86.